

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 351 / 2009

Tuesday, this the 29th day of December, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

Joby Scaria,
Adhoc Sr. Goods Guard/Southern Railway,
Ernakulam Marshalling Yard,
Ernakulam.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manager,
Southern Railway, Headquarters Office,
Park Town.P.O., Chennai-3.
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
3. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Divisional Office,
Trivandrum-14.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 4.11.2009, the Tribunal on **29.12.2009** delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's main grievance is against the AnnexureA-6 impugned letter dated 4.6.2008 by which the result of written test for selection to the post of Passenger Guards in the scale of Rs.5000-8000 held on 24.2.2007 was notified.



While the employees who have secured 60% marks and above in the written test were eligible for further consideration in the selection, the applicant was shown to have secured only 54% marks. Having not satisfied with the marks awarded to him, he made the Annexure A-7 request dated 07/2008 to review/re-check his answer papers and to intimate the result to him. On his further request dated 5.3.2009 for information under the Right to Information Act, 2005 he was supplied with the copy of his answer sheet. He has also filed the Annexure A-9 letter dated 5.5.2008 from the respondents addressed to one of his colleagues Shri P Abraam Jacob wherein it was stated that Answer Key was not available for supply. Meanwhile, the 3rd respondent published the Annexure A-10 panel of the selected candidates dated 18.9.2008. According to the said panel against the 13 vacancies notified (UR-8, SC-3 and ST-2), only 4 UR candidates were included in the panel. By Annexure A-11 order dated 13.10.2008 issued by the 3rd respondent all those who are empanelled in the Annexure A-10 list were promoted as regular Passenger Guards.

2. After issuing the copy of the Annexure A-8 Answer Sheet supplied to him applicant noticed the following irregularities:

- (a) There is an error in totaling – i.e. as against 59 marks, only 54 is shown (5 marks in the last page was not taken into account);
- (b) Two of the questions for which correct answers were given were shown as wrong answers – resulting in loss of two more marks.

According to the applicant, the correct answer to Question No.5(b), namely, "the running time between TVC and KCVL as per WTT is 8 Min." can only be 'No' because as per the Working Time Table (WTT for short), there is no fixed time of 8 minutes. It varies from train to train. There were 7 different timings as per WTT for travel from Trivandrum to Kochuveli as follows:



- (i) 6332 Exp., 6328 Exp. 6326 Exp. Etc. 8 mins,
- (ii) 6302 Exp. 12 mins.
- (iii) 2076 Exp. 07 mins.
- (iv) 724 Passr. 11 mins.
- (v) 366 Passr. 13 mins.
- (vi) 6347 Exp. 15 mins.
- (vii) 6343 Exp. 09 Mins.

The applicant has also produced copy of the relevant pages of WTT No.39 of Trivandrum Division in vogue as on date as Annexure A-13. Similarly Question No.5(d), namely, "the target time for turning out MRV is 20 Mins." has also two timings – 20 minutes and 25 minutes as per Para 3.03 of the Accident Manual in force from January 2001, published by the southern Railway and produced as Annexure A-14.

3. According to the applicant, respondents have also not prepared the "Key to answers" which was essentially required to be prepared before the evaluation takes place.

4. He has, therefore, made the Annexure A-15 representation dated 3.4.2009 to the 2nd respondent showing the aforesaid irregularities/anomalies in the question paper and requested to allot marks correctly to him and publish the result without any delay. Respondents have not given any response to the aforesaid representation. Hence he has approached this Tribunal seeking the following reliefs:

- (I) call for the records leading to the issue of Annexure A-6 and quash the same to the extent it awards the applicant only 54 marks;
- (II) call for the records leading to the issue of Annexure A-10 and A-11 and quash the same to the extent they exclude the applicant;
- (III) declare that the applicant is qualified in the written examination conducted in response to Annexure A-1 notification for promotion to the



post of Passenger Guard and declare further that the applicant is entitled to be considered and placed in Annexure A-10 and A-11 at the appropriate place with the benefit of promotion as Passenger Guard from the date from which Annexure A-11 was issued;

- (IV)Direct the respondents to re-total and re-value the answer sheets of the applicant duly taking into consideration the nature of questions V(b) and (d) and the answer given by the applicant vis-a-vis A-13 and A-14 and direct the respondents to include the Applicant at the appropriate place in Annexure A-10 and A-11 with a further direction to grant the applicant the benefit of promotion as Passenger Guard with effect from the date of Annexure A-11;
- (V)Direct the respondents to grant the applicant the benefit of the arrears of pay and allowances in the light of the declarations and directions above mentioned.
- (VI)Award costs of and incidental to this application.

5. Respondents in the reply have submitted that the 5 marks awarded in the last page of the answer sheets was inadvertently left out while adding marks by the examiner and therefore, the applicant was eligible for 5 more marks. As regards question No.5(b) regarding the running time between Trivandrum to Kochuveli as per WTT, they have reiterated that it was only 8 minutes and "No" of the applicant is wrong. They have further submitted that the running time of most of the non-stopping express trains between Trivandrum and Kochuveli was the same with 2 exceptions. Running time for express trains stopping at the intermediate station Trivandrum Pettah, running time for passenger trains and running time for goods trains are different. According to them, a candidate with a positive frame of mind simply cannot answer "No" as one major aspect of the answer is "Yes". As regards the question No.5(d) regarding turnout time for Medical Relief Van, it is 20 minutes from a double exit siding and 25 minutes from a single exit siding. The applicant's answer as 20 minutes was, therefore, wrong. According to them, he cannot answer as "No" when the turnout time for Medical Relief Van from a double exit siding was 20 minutes.

6. They have further submitted that even if the left out 5 marks are added, the total will only be 59 as against minimum requirement of 60%. Hence the



respondents cannot proceed further with the request of the candidate to award extra marks to become qualified in the selection as 23 failed candidates were available including some candidates who were seniors to him.

7. We have heard the learned counsel on both sides. The first impression that we get from the submissions of the applicant as well as the respondents is that the respondent-Railways were not meticulous in evaluating the answer papers. It was a serious lapse on their part to omit 5 marks in totalling the total marks actually been awarded to him. It only shows the carelessness of the examiner who has evaluated the answer sheet of the applicant. Coming to the two questions regarding running time between Trivandrum and Kochuveli as per WTT and the turnout time for Medical Relief Van, it is obvious from the reply of the respondents themselves that there was possibility of 2 answers to those questions. In other words, the questions were not specific at all. As pointed out by the applicant, while the express trains takes only 8 minutes to run between Trivandrum and Kochuveli, the timings of other express trains as well as passenger trains were between 7 to 15 minutes. Respondents should have been very specific regarding this question. If the statement was the running time of non stopping express trains between Trivandrum and Kochuveli as per WTT is 8 minutes, the answer would have been unambiguously "yes". Similarly, there is vagueness in question No.5(d) regarding turnout time for Medical Relief Van. The respondents themselves have clarified that 20 minutes time is for Medical Relief Van from a double exit siding and for single exit siding it is only 25 minutes. As contended by the applicant, the answer given by him could have been taken as correct. In that case, the applicant has to be treated as passed in the written test with 61% marks. Even otherwise, ignoring the aforesaid 2 questions, if a total marks are treated as 98, since the applicant has obtained



the 59 marks, its percentage is 60.2. On both counts, applicant has to be treated as passed in the written examination with more than 60% marks.

8. In view of the above position, this O.A succeeds. We declare that the applicant is qualified in the written examination conducted on 24.2.2007 to the post of Passenger Guard. We further declare that he was entitled to be considered and placed in Annexure A-10 and A-11 at the appropriate place with the benefit of promotion as Passenger Guard from the date from which Annexure A-11 was issued. Consequently, the respondents shall grant him the benefit of arrears of pay and allowances in the light of the above declarations and directions. Orders in this regard shall be issued by the respondents within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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